



[Billing Code: 6750-01S]

FEDERAL TRADE COMMISSION

16 CFR Part 305

[3084-AB15]

Energy Labeling Rule

AGENCY: Federal Trade Commission (“FTC” or “Commission”).

ACTION: Final rule.

SUMMARY: The Commission issues amendments to the Energy Labeling Rule to eliminate certain marking requirements for plumbing products and to exempt certain ceiling fans from labeling requirements. Additionally, the amendments update the Rule to include labeling requirements for electric instantaneous water heaters. The Commission also makes non-substantive, conforming changes to the testing provisions for LED covered lamps and minor corrections to other provisions.

DATES: This rule is effective on [INSERT DATE 180 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], except for the amendments to § 305.13, which are effective on September 17, 2018, and the amendments to § 305.16, which are effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Relevant portions of the record of this proceeding, including this document, are available at <http://www.ftc.gov>.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, (202) 326-2889,

Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission issued the Energy Labeling Rule (“Rule”) in 1979,¹ pursuant to the Energy Policy and Conservation Act of 1975 (EPCA).² The Rule requires energy labeling for major home appliances and other consumer products to help consumers compare competing models. It also contains labeling requirements for refrigerators, refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners, furnaces, central air conditioners, heat pumps, plumbing products, lighting products, ceiling fans, and televisions.

The Rule requires manufacturers to attach yellow EnergyGuide labels to many of the covered products and prohibits retailers from removing these labels or rendering them illegible. In addition, it directs sellers, including retailers, to post label information on websites and in paper catalogs from which consumers can order products. EnergyGuide labels for most covered products contain three key disclosures: estimated annual energy cost, a product’s energy consumption or energy efficiency rating as determined by DOE test procedures, and a comparability range displaying the highest and lowest energy costs or efficiency ratings for all similar models. For cost calculations, the Rule specifies national average costs for applicable energy sources (*e.g.*, electricity, natural gas, oil) as calculated by DOE. Under the Rule, the

¹ 44 FR 66466 (Nov. 19, 1979).

² 42 U.S.C. 6294. EPCA also requires the Department of Energy (DOE) to develop test procedures that measure how much energy appliances use, and to determine the representative

Commission periodically updates comparability range and annual energy cost information based on manufacturer data submitted pursuant to the Rule's reporting requirements.³

II. Amendments to the Energy Labeling Rule

In a September 12, 2016 Notice of Proposed Rulemaking (2016 NPRM), the Commission sought comment on several issues including portable air conditioner (portable AC or PAC) labeling, large-diameter and high-speed small-diameter (HSSD) ceiling fan labels, electric instantaneous water heater labeling, and plumbing disclosures changes. The Commission received 10 comments in response.⁴ After reviewing responsive comments, the Commission now issues final amendments addressing these issues.

A. Portable Air Conditioners

Background: In its 2016 NPRM, the Commission proposed requiring EnergyGuide labels for portable air conditioners, concluding that such labels will aid consumers in their purchasing decisions.⁵ Given the similarity of portable ACs to room air conditioners (room ACs or RACs), the Commission proposed requiring the same or similar labeling for the two products. It also

average cost a consumer pays for different types of energy.

³ 16 CFR 305.10.

⁴ See 81 FR 62681. The comments received in response to the 2016 NPRM are here: <https://www.ftc.gov/policy/public-comments/initiative-681>. The comments included: Delta T Corporation dba Big Ass Solutions (Delta T) (#00009); De Longhi Appliances (#00010); A. O. Smith Corporation (#00011); Association of Home Appliance Manufacturers (AHAM) (#00012); Rheem Manufacturing Company (#00013); Appliance Standards Awareness Project ("Joint Commenters") (#00014); Air-Conditioning, Heating, and Refrigeration Institute (AHRI) #00015; Hunter Fan Company (#00008); Plumbing Manufacturers International (PMI) #00003; and the People's Republic of China (#0016 and #0017).

⁵ The Commission also stated such labels would be economically and technologically feasible. See 42 U.S.C. 6294(a)(3). The Commission addressed the benefits and feasibility of labels for these products in earlier notices. See 81 FR at 62682-83; 80 FR 67351, 67357 (Nov. 2, 2015).

noted that DOE had issued a new test procedure for portable ACs on June 1, 2016 (81 FR 35242). However, the Commission explained that the content and timing of DOE's new test procedure raised several new issues that affect such labeling. First, DOE's test procedures do not generate comparable results for portable and room air conditioners.⁶ This inconsistency could mislead consumers comparing the two types of products. The Commission therefore proposed waiting to issue portable AC labels until DOE harmonizes the two tests.⁷ It also invited comment on whether to combine portable AC and room AC comparability ranges.⁸ Finally, the Commission sought input on the timing of these requirements, including data reporting, for portable air conditioners. Citing significant burdens associated with testing and labeling, earlier industry comments urged the Commission to synchronize the date for compliance of any new labeling requirements with the date of compliance with DOE efficiency standards, which would occur roughly five years after DOE issues such standards.

Comments: Commenters generally supported labeling for portable ACs. They also agreed, for different reasons, that the Commission should not combine comparability ranges for portable and room ACs at this time. In addition, industry members urged the Commission to

⁶ 81 FR at 35251. DOE stated that it would consider amending the room air conditioner procedure to address this issue. However, it is not clear when it will do so.

⁷ Consistent with the Commission's recent decision on room air conditioners, the Commission indicated that the portable AC label would appear on the product box, not the unit itself. In addition, the portable AC label would disclose the Combined Energy Efficiency Ratio (CEER). *See* 80 FR at 67293.

⁸ In response to an earlier notice, commenters had disagreed on this issue. *See* 81 FR at 62682-83. In DOE's test procedure notice, DOE stated that "comparative ratings between room ACs and portable ACs [are] desirable," suggesting that consumers do compare these products. *See* 81 FR at 35251. DOE also noted "the many similarities between room ACs and portable ACs in design, cost, functionality, consumer utility, and applications." *Id.* at 35250.

synchronize the timing of new label requirements with proposed DOE energy efficiency standards, which may not become effective for several years.

Industry members, AHAM and DeLonghi, as well as China argued against combining label ranges for portable and room ACs because of significant differences in how consumers purchase and use these products and the consumer confusion such combined information may cause.⁹ Specifically, AHAM and DeLonghi argued that consumers are unlikely to compare these products because they use them for different purposes. In support of its position, AHAM presented consumer research suggesting that each product has “unique key purchase drivers.” Specifically, portable AC buyers generally seek the flexibility to move the product from room to room and store it elsewhere in cooler weather. In addition, these consumers often purchase portable ACs because room models do not fit in their windows. As DeLonghi explained, portable ACs generally offer a “unique solution” where installation of other air conditioner types is “forbidden or impracticable.”¹⁰ AHAM added that most air conditioner owners are likely to choose the configuration (PAC or RAC) they currently own when they purchase a new unit. AHAM noted that room AC owners generally use these products as the principal source of cooling, while portable ACs owners often use those products for supplemental cooling. Finally, AHAM pointed to DOE research suggesting that room ACs are generally operated more hours

⁹ China added that the test methods and the user experience for the two product types are different.

¹⁰ In AHAM’s view, room AC buyers do not need the ability to move units from room to room, view PACs as too expensive, or are unaware of PACs. AHAM also suggested, based on its research, the consumers will not focus on EnergyGuide labels because cooling capacity and price are much higher priorities for consumers than energy efficiency and operating costs. According to AHAM, even if consumers compare RACs and PACs while shopping, they may not be

annually than portable ACs. It also noted that the current room ACs have different categories for non-louvered and casement RACs, categories which do not apply to portable units.¹¹

The Joint Commenters similarly recommended against combining ranges at this time. However, they also recommended initiating separate ranges to avoid delay and ensure consumers have access to energy labels pending DOE test harmonization. They explained that the test conditions impose different outdoor temperatures for the two product types. The inconsistency favors portable ACs, making them appear more efficient. Therefore, although portable AC labels generated under the test will not allow for a direct comparison to room AC labels, the labels will still accurately depict portable ACs as generally less efficient (and thus more costly to operate) than room ACs.¹²

In contrast, AHAM and DeLonghi recommended the Commission wait and synchronize the labeling requirements with the compliance date for new DOE efficiency standards, which would be set five years after DOE issues such standards. AHAM explained that its members will devote considerable resources over the next few years to ensure product lines meet the new DOE standards.¹³ AHAM also stated that the pre-development, development, and tooling phases of launching a new product take years to complete and require extensive resources. According to AHAM, complying with an EnergyGuide label requirement before the DOE compliance date

comparing energy costs in making purchasing decisions.

¹¹ AHAM also argued that DOE's statement about the desirability for harmonized test results, cited by the Commission in the NPRM, has no bearing on whether consumers actually compare these products when shopping.

¹² The Joint Commenters suggested that FTC consider label language alerting consumers that the room AC test conditions are not consistent with those for PACs.

¹³ AHAM provided additional information involving the expected burden of labeling.

“will require companies to divert resources from developing new, more efficient products.”

Aligning the compliance dates would “allow manufacturers to engage in the extensive development and testing activities required to innovate and bring more efficient products to market and to comply with regulatory requirements.” AHAM added that, should FTC decide to move forward with labeling/reporting requirements before the DOE compliance date, the compliance date for the labeling requirements should not be prior to October 1, 2017 and should be synchronized with the annual production cycle (*i.e.*, the cooling season) for these products.¹⁴

Discussion: The Commission is not issuing final label requirements for portable air conditioners at this time. As discussed above, commenters disagree on the timing of compliance with new labeling requirements. AHAM and DeLonghi argued that the compliance dates for labels and DOE efficiency standards should be synchronized to allow industry to focus more of their resources during the five-year standards compliance period on developing more efficient products rather than on labeling products. The Joint Commenters, on the other hand, seek a shorter compliance period, arguing that the label information would benefit consumers before implementation of the standards.¹⁵ However, in January 2017, DOE withdrew its final efficiency

¹⁴ AHAM also requested more details about the label content, compliance dates, and reporting requirements before issuing a final rule and urged that the reporting and labeling requirements be consistent with DOE’s reporting requirements and the DOE test procedure. As the Commission has stated before, the proposed label content is largely identical to those for room ACs.

¹⁵ In arguing for a shorter label compliance period, the Joint Commenters note that a 2010 Commission rule (75 FR 41699 (July 19, 2010)) required new labeling for certain lighting products prior to the effective date of energy efficiency standards for those products because labeling “will provide benefits to consumers that outweigh any additional cost to industry.” However, in response to industry concerns in that proceeding, the Commission later exempted some of the bulbs in question from the new labeling requirements, explaining in part that the exemption would allow manufacturers to focus their labeling resources “on products that will

standards from publication in the Federal Register pursuant to an Executive Order, leaving any final standards compliance date unclear at this time.¹⁶ Therefore, before considering this issue further, the Commission will wait for further clarity regarding DOE's energy efficiency standards.

B. Large-Diameter and High-Speed Small Diameter Ceiling Fan Labels

Background: In final amendments published September 15, 2016 (81 FR 63634) (2016 Final Rule), the Commission issued updated ceiling fan labels, which will be required on all fan boxes beginning on September 17, 2018. In publishing the new label, the Commission excluded large-diameter fans (*i.e.*, greater than 84 inches) and high-speed small-diameter fans because new DOE testing requirements prescribe significantly different operating assumptions (hours per day) for these models.¹⁷ As a result, the test yields incompatible yearly cost estimates among these different fan types.¹⁸ Absent adequate disclosures alerting consumers to these different operating

remain in the market well into the future" 76 FR 20233, 20236 (April 12, 2011).

¹⁶ In December 2016, DOE announced a final rule establishing reporting requirements and future efficiency standards for portable ACs. *See* "Issuance: 2016-12-28 Energy Conservation Program: Energy Conservation Standards for Portable Air Conditioners; Final Rule," <https://energy.gov/eere/buildings/downloads/issuance-2016-12-28-energy-conservation-program-energy-conservation-2>. Pursuant to the Presidential Memorandum on Implementation of Regulatory Freeze (Jan. 24, 2017), DOE subsequently withdrew the final rule from publication in the Federal Register.

¹⁷ *See* 81 FR 48620 (July 25, 2016). In its proposed test procedure Notice, DOE described a HSSD fan as a model that has a blade thickness of less than 3.2 mm at the edge or a maximum tip speed greater than applicable limits set out by DOE and does not otherwise qualify as "a very small-diameter ceiling fan, highly-decorative ceiling fan or belt-driven ceiling fan." 81 FR 1688, 1700, 1703 (Jan. 13, 2016).

¹⁸ The DOE test procedure dictates a 6.4-hour per day operating assumption for standard fans but a 12-hour per day figure for large-diameter and HSSD models. 81 FR at 48645.

assumptions, the resulting inconsistencies could be misleading. Accordingly, the Commission sought comment on the need for, and content of, large-diameter and HSSD fan labels.

Comments: Commenters agreed the Commission should not require labels for large-diameter fans. Delta T asserted that such labels would create little or no benefit for consumers while adding burden and costs for manufacturers. Citing DOE research, Delta T explained that large-diameter fans are typically not sold to individual consumers through retail outlets or e-commerce sites. Thus, in its view, labeling would not benefit typical purchasers while creating additional burden and cost for manufacturers. Hunter indicated that large diameter fan labels are likely to confuse consumers if such labels are inconsistent with small-diameter fan labels. Delta T cautioned that such inconsistent labels would confuse consumers given the vastly different applications for these products.

Should the FTC require labels, Delta T recommended the label display integrated efficiency, maximum power consumption, and maximum cubic feet per minute of airflow, and cost comparisons limited to similar-size products. In addition, Hunter recommended disclosures advising consumers not to compare large-diameter models to small ones.

Discussion: The Commission has determined not to require labels for large-diameter and HSSD fans.¹⁹ Based on the comments and DOE information, large-diameter and HSSD fans are generally not sold to residential consumers but rather purchased by commercial or industrial entities unlikely to use a consumer label.²⁰ Therefore, the Commission concludes that for these

¹⁹ The amendments contain a minor correction to section 305.13 regarding the fan sizes included for covered models.

²⁰ The commenters did not specifically address HSSD fans. However, DOE stated in an earlier

products the labeling costs would substantially outweigh labeling benefits.²¹ However, manufacturers and other marketers should note that, under EPCA (42 U.S.C. 6293(c)), any energy representations (*e.g.*, airflow ratings) made for these products, whether on packaging, in advertising, or elsewhere, must fairly disclose the results of the DOE test procedure.²²

C. Electric Instantaneous Water Heaters

Background: In its 2016 NPRM, the Commission proposed to include EnergyGuide labeling provisions for electric instantaneous water heaters. Although such products already fell within the Rule’s “water heater” definition (section 305.3), the Commission in the past did not require that they be labeled because DOE did not have an applicable test method. In 2014, however, DOE updated its water heater test procedure to include such a test method.²³ Accordingly, in the 2016 NPRM, the Commission proposed updating the Rule to publish comparability ranges and labeling provisions for these water heater models.²⁴ The labels for the electric instantaneous models are no different from other covered water heaters. The

notice that “HSSD ceiling fans generally operate at much higher speeds (in terms of RPM) than standard or hugger ceiling fans, and are installed in commercial applications.” 81 FR at 1703.

²¹ Under EPCA, the Commission may forgo label requirements for covered products if it determines that labeling for a product type or class thereof is not “economically or technically feasible.” *See* 42 U.S.C. 6294(b)(5). In interpreting this statutory provision, the Commission has stated “that Congress[’s] intent was to permit the exclusion of any product category, if the Commission found that the costs of the labeling program would substantially outweigh any potential benefits to consumers.” 44 FR at 66467–68.

²² China requested the Rule include definitions for large-diameter and HSSD fans. The amendments published by the Commission on September 15, 2016 (81 FR at 63646) (section 305.3(x)) reference the DOE definitions for these terms in 10 CFR part 430.

²³ 79 FR 40542 (July 11, 2014).

²⁴ 81 FR at 62683-84. In earlier comments, AHRI recommended labels for these products in light of the DOE test procedure change. *See* AHRI comments (Jan. 11, 2016) (#00015).

Commission proposed requiring manufacturers to begin using labels on their products within 180 days of the final Rule to give manufacturers adequate time to label their models.

Comments: The commenters (AHRI, A.O. Smith, and Rheem) supported the Commission requiring labels for electric instantaneous water heaters. For instance, A.O. Smith stated that labeling requirements “will assure a transparent level playing field upon which manufacturers will be able to communicate important information to consumers.” However, these comments raised concerns about physically attaching labels to these products. They explained that electric instantaneous units are generally too small to accommodate the EnergyGuide label. A.O. Smith also noted that these products are most commonly displayed in their packaging (*i.e.*, box). Therefore, the commenters requested that the Commission either allow manufacturers to place the label on packaging (like ceiling fans), include the label with other product literature, or affix hang tags directly on the product (an option currently prohibited by the Rule).²⁵

Discussion: Consistent with the comments and EPCA’s mandate, the final amendments impose labeling requirements, including the comparability ranges proposed in the 2016 NPRM for electric instantaneous water heaters.²⁶ The cost figure for the label is 12 cents per kWh, consistent with the figure currently used for electric storage water heater labels. In response to

²⁵ Rheem and AHRI noted conforming changes needed for the online sample template label for instantaneous water heaters on the FTC website. Those changes have been made at <https://www.ftc.gov/tips-advice/business-center/guidance/energyguide-labels-templates-manufacturers>.

²⁶ Under EPCA (42 U.S.C. 6294(a)(1)), the Commission must require labels for water heaters unless it finds such labeling is not technologically or economically feasible. The comments, all from industry members supporting the label, identified no such barriers.

comments indicating that the products themselves are generally too small for an adhesive label and that the products are usually displayed in boxes, the final Rule requires the label to appear conspicuously on the product's packaging, not on the product itself.²⁷ Manufacturers may incorporate the label into the packaging graphics or affixing adhesive labels to the box.²⁸

D. Plumbing ASME Reference Update

Background: In the 2016 NPRM, the Commission also proposed updating the marking and labeling requirements in Section 305.16 to remove a reference to the ASME (American Society of Mechanical Engineers) standards that the Rule requires on showerheads and faucets ("A112.18.1"), as well as water closets and urinals ("A112.19.2"). The Commission explained that the required marking appears to have outlived its usefulness, and that its removal likely will have no negative impact on consumers or other market participants. In addition, the current revisions of both ASME standards no longer require these markings.

Comments: All commenters addressing this issue supported the proposal. PMI agreed these standard markings have outlived their usefulness and are no longer required by the latest

²⁷ Consistent with the proposal, the final amendments require labels for models produced beginning 180 days after publication of this Notice. In addition, the final Rule does not allow labels to be included in literature disseminated with the product or affixed as hang tags. The inclusion of labels in product literature would prevent consumers from examining the label prior to purchase. In addition, the Rule (section 305.11(e)(2)) prohibits the placement of hang tags on product exteriors because such labels may "become misplaced or damaged easily" in a retail environment. See 72 FR 49948, 49961 (Aug. 29, 2007).

²⁸ AHRI's comments also raised concerns about whether gas-fired instantaneous water heaters can accommodate the size of the label. However, the Rule has required labels for gas-fired units for decades with no apparent difficulty and the 2016 NPRM did not propose any changes for gas-fired model labels. In addition, both Rheem and A.O. Smith indicated in their comments that electric models are generally smaller than gas-fired ones. The Commission therefore has determined not to address labels of gas-fired instantaneous water heaters in the final

versions of the ASME standards. PMI provided suggested language to ensure that the amendments delete the ASME marking requirements from the Rule. PMI also requested that the proposed rulemaking become effective no later than 30 days after it is published in the Federal Register to allow manufacturers to remove the markings from their products as soon as possible.

Discussion: As proposed, the final amendments remove the ASME references in the Rule.²⁹ As discussed in the 2016 NPRM, these disclosures are unlikely to aid consumers or industry members and, as such, impose unnecessary burdens. The final changes incorporate the Rule language suggestions offered by PMI. The amendments will become effective 30 days after publication of this Notice in the Federal Register.

E. LED Test Procedure Reference

The final amendments include a non-substantive, conforming change to the Rule's testing provisions (section 305.5) to clarify that manufacturers must use DOE test procedures for LED covered lamps. In the past, the Rule stated that the Commission will accept tests conducted according to IEA LM79 as a reasonable basis for representations of light output for general service LED lamps. However, on July 1, 2016 (81 FR 43404), DOE issued final test procedures incorporating LM79 standard by reference. Because EPCA requires manufacturers to use DOE

amendments.

²⁹ EPCA directs the Commission to amend the plumbing labeling requirements to be consistent with any revisions to these ASME standards, unless the Commission finds such amendments would be inconsistent with EPCA's purposes or certain labeling requirements for plumbing products. 42 U.S.C. 6294(a)(2)(E)(ii). As noted in earlier comments, the ASME standards themselves no longer require such markings, and applicable plumbing codes now impose similar disclosures and require manufacturers to third-party certify their products to the current applicable standard. Accordingly, these amendments are consistent with EPCA. *See* 81 FR at 62684.

test procedures for labeling,³⁰ the Rule provision's reference to IEA LM79 is now obsolete. Accordingly, the Commission finds good cause for amending the testing provisions for LED covered lamps to remove the obsolete reference to IEA LM79 without notice and comment because such a procedure is unnecessary in this case. *See* 16 CFR 1.26(b).³¹

III. Paperwork Reduction Act

The current Rule contains recordkeeping, disclosure, testing, and reporting requirements that constitute information collection requirements as defined by 5 CFR 1320.3(c), the definitional provision within the Office of Management and Budget (OMB) regulations that implement the Paperwork Reduction Act (PRA). OMB has approved the Rule's existing information collection requirements through November 30, 2019 (OMB Control No. 3084-0069). The amendments make changes in the Rule's labeling requirements that will increase the PRA burden as detailed below.³² Accordingly, the Commission is seeking OMB clearance specific to the Rule amendments.³³

Burden estimates below are based on Census data, DOE figures and estimates, general knowledge of manufacturing practices, and trade association advice and figures. The FTC

³⁰ 42 U.S.C. 6293(c) and 6294(c)(1)(A).

³¹ The amendments also include minor corrections to language in section 305.11(f) for refrigerators and freezers (*e.g.*, deletes an obsolete reference to "year"), clothes washers, and dishwashers, and to the cost figure for television disclosures in paper catalogs in section 305.20(b)(1)(i)(F). The Commission finds good cause for implementing these corrections without notice and comment.

³² The amendments to the plumbing provisions add no additional burden beyond existing estimates.

³³ The PRA analysis for this rulemaking focuses strictly on the information collection requirements created by and/or otherwise affected by the amendments. Unaffected information collection provisions have previously been accounted for in past FTC analyses under the Rule

estimates that there are about 100 basic models (*i.e.*, units with essentially identical physical and electrical characteristics) affected by these amendments. In addition, FTC staff estimates that there are 6 instantaneous water heater manufacturers. The FTC estimates that there are 100,000 electric instantaneous water heaters shipped each year in the U.S.

Annual Burden Hours

Reporting: FTC staff estimates that manufacturers will require approximately two minutes per model to enter label data per basic model. Accordingly, the FTC estimates that cumulative annual reporting burden will be 3 hours (2 minutes per model \times 100 basic models).

Labeling: FTC staff estimates that manufacturers will require six seconds per unit to affix labels. Accordingly, the FTC estimates that cumulative annual disclosure (labeling) burden will be 167 hours to affix labels [(six seconds per unit \times 100,000 total annual product shipments)].

Testing: For testing, manufacturers will require approximately 24 hours for each water heater. The FTC estimates that, on average, 50% of the total basic models are tested each year. Accordingly, the estimated annual testing burden for electric instantaneous water heaters is 1,200 hours (24 hours \times 100 \times 0.5).

Recordkeeping: The Rule also requires electric instantaneous water heater manufacturers to keep records of test data generated in performing the tests to derive information included on labels. The FTC estimates that it will take manufacturers one minute per record (*i.e.*, per model)

and are covered by the current PRA clearance from OMB.

to store the data. Accordingly, the estimated annual recordkeeping burden would be approximately 2 hours (1 minute x 100 basic models).

Catalog Disclosures: Based upon FTC staff research concerning the number of manufacturers and online retailers, staff estimates that there are an additional 150 catalog sellers who are subject to the Rule's catalog disclosure requirements. Staff estimates further that these sellers each require approximately 2 hours per year to incorporate the data into their catalogs. This estimate is based on the assumptions that entry of the required information takes on average one minute per covered product and that the average online catalog contains approximately 100 covered products relevant here. Given that there is great variety among sellers in how many products that they offer online, it is very difficult to estimate such numbers with precision. In addition, this analysis assumes that information for all 100 covered products is entered into the catalog each year. This is a conservative assumption because the number of incremental additions to the catalog from year to year is likely to be much lower after initial start-up efforts have been completed. Thus, the total annual disclosure burden for all catalog sellers of electric instantaneous water heaters covered by the Rule is 300 hours (150 sellers × 2 hours).

Thus, estimated annual burden attributable to the amendments is 1,672 hours (3 hours for reporting + 167 for labeling + 1,200 for testing + 2 hours for recordkeeping + 300 disclosure hours for catalog sellers).

Annual Labor Costs

Staff derived labor costs by applying assumed hourly wages³⁴ to the burden hours described above. In calculating labor costs, the FTC assumes that electrical engineers perform test procedures, electronic equipment installers affix labels, and data entry workers enter label data, catalog disclosures, and perform recordkeeping. Average hourly wages for these labor categories, based on BLS data, are as follows: (1) electrical engineers (\$47.41); (2) electronic equipment installers (\$24.27); and (3) data entry workers (\$16.24).

Based on the above estimates and assumptions, the total annual labor cost for the various burden categories and sub-categories noted above is as follows:

Reporting: 3 hours x \$16.24/hour (data entry workers) = \$49

Labeling: 167 hours x \$24.27 (electronic equipment installers) = \$4,053

Testing: 1,200 hours x \$47.41/hour (electrical engineers) = \$56,892

Recordkeeping: 2 hours x \$16.24/hour (data entry workers) = \$32

Catalog Disclosures: 300 hours x \$16.24/hour (data entry workers) = \$4,872

Thus, the total annual labor cost is approximately \$65,898.

Annual Non-Labor Costs

Manufacturers are not likely to require any significant capital costs to comply with the amendments. Industry members, however, will incur the cost of printing package labels for each covered unit. The estimated label cost, based on \$.03 per label, is \$3,000 (100,000 x \$.03).

³⁴ The mean hourly wages that follow are drawn from “Occupational Employment and Wages—May 2016,” Bureau of Labor Statistics (“BLS”), U.S. Department of Labor, Table 1, released March 31, 2017 (“National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2016”), available at <https://www.bls.gov/news.release/ocwage.t01.htm>.

Total Estimated Burden: Accordingly, the estimated total hour burden of the final amendments is 1,672 with associated labor costs of \$65,898 and annualized capital or other non-labor costs totaling \$3,000.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612, requires that the Commission provide an Initial Regulatory Flexibility Analysis (IRFA) with a Proposed Rule, and a Final Regulatory Flexibility Analysis (FRFA) with the final Rule, unless the Commission certifies that the Rule will not have a significant economic impact on a substantial number of small entities.³⁵

The Commission does not anticipate that the final amendments will have a significant economic impact on a substantial number of small entities. The Commission recognizes that some affected entities may qualify as small businesses under the relevant thresholds. The Commission does not expect, however, that the economic impact of implementing the amendments will be significant because the amendments involve routine labeling requirements commonly implemented by the affected entities and, as illustrated in the PRA analysis, the PRA burden of these requirements is not large. The Commission will provide businesses with ample time to implement the requirements. In addition, the Commission does not expect that the requirements specified in the final amendments will have a significant impact on affected entities.

Although the Commission certified under the RFA that the amendments would not, if

³⁵ 5 U.S.C. 603-605.

promulgated, have a significant impact on a substantial number of small entities, the Commission has determined, nonetheless, that it is appropriate to publish an FRFA in order to explain the impact of the amendments on small entities as follows:

A. Description of the Reasons That Action by the Agency Is Being Taken

The Commission is issuing a new energy label for electric instantaneous water heaters to help consumers with their purchasing decisions. It is also amending the Rule's requirements to eliminate unnecessary requirements regarding plumbing disclosures.

B. Issues Raised by Comments in Response to the IRFA

The Commission did not receive any comments specifically related to the impact of the final amendments on small businesses. In addition, the Commission did not receive any comments filed by the Chief Counsel for Advocacy of the Small Business Administration. Comments that involve impacts on all entities are discussed above in the Paperwork Reduction Act section.

C. Estimate of Number of Small Entities to Which the Amendments Will Apply

Under the Small Business Size Standards issued by the Small Business Administration, appliance manufacturers qualify as small businesses if they have fewer than 1,000 employees (for other household appliances the figure is 500 employees). Catalog sellers qualify as small businesses if their sales are less than \$8.0 million annually. FTC staff estimates that there are approximately 100 catalog sellers subject to the proposed rule's requirements that qualify as

small businesses.³⁶

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The amendments would slightly increase reporting or recordkeeping requirements associated with the Commission's labeling rules as discussed above. The amendments likely will increase compliance burdens by extending the labeling requirements to instantaneous electric water heaters. As previously explained in the PRA analysis, the Commission anticipates that the labeling will be implemented by electronic equipment installers.

E. Description of Steps Taken To Minimize Significant Economic Impact, If Any, on Small Entities, Including Alternatives

The Commission sought comment and information on the need, if any, for alternative compliance methods that would reduce the economic impact of the Rule on such small entities. In response to comments, the Commission has given manufacturers the option of printing or affixing labels on electric instantaneous water heaters to provide flexibility in meeting that requirement. The Commission also removed outdated references on plumbing products that are unlikely to aid consumers or industry members and, as such, impose unnecessary burdens.

Final Rule

List of Subjects in 16 CFR Part 305

³⁶ See 75 FR 41696, 41712 (July 19, 2010). The staff has not identified any manufacturers affected by the amendments that are small businesses.

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

For the reasons discussed above, the Commission amends part 305 of title 16, Code of Federal Regulations, as follows:

**PART 305--ENERGY AND WATER USE LABELING FOR CONSUMER PRODUCTS
UNDER THE ENERGY POLICY AND CONSERVATION ACT (“ENERGY LABELING
RULE”)**

1. The authority citation for part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

2. Amend § 305.11 by revising paragraph (d) introductory text, adding paragraph (d)(3), and revising paragraphs (f)(9)(i), (iv), and (vii) through (x) to read as follows:

§ 305.11 Labeling for refrigerators, refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters, room air conditioners, and pool heaters.

* * * * *

(d) *Label types.* Except as indicated in paragraph (d)(3) of this section, the labels must be affixed to the product in the form of an adhesive label or a hang tag as follows:

* * * * *

(3) *Package labels for certain products.* Labels for electric instantaneous water heaters shall be printed on or affixed to the product’s packaging in a conspicuous location.

* * * * *

(f) * * *

(9) * * *

(i) Labels for refrigerators and refrigerator-freezers must contain a statement as illustrated in the prototype labels in appendix L and specified as follows (fill in the blanks with the appropriate energy cost figure):

Your cost will depend on your utility rates and use.

Both cost ranges based on models of similar size capacity.

[Insert statement required by § 305.11(f)(9)(iii)].

Estimated energy cost based on a national average electricity cost of ____ cents per kWh.

ftc.gov/energy.

* * * * *

(iv) Labels for freezers must contain a statement as illustrated in the prototype labels in appendix L and specified as follows (fill in the blanks with the appropriate energy cost figure):

Your cost will depend on your utility rates and use.

[Insert statement required by § 305.11(f)(10)(v)].

Estimated energy cost based on a national average electricity cost of ____ cents per kWh.

ftc.gov/energy.

* * * * *

(vii) For water heaters covered by appendices D1, D2, and D3, the statement will read as follows (fill in the blanks with the appropriate fuel type, and energy cost figures):

Your costs will depend on your utility rates and use.

Cost range based only on models fueled by [natural gas, oil, propane, or electricity] with a [very small, low, medium, or high] first hour rating [fewer than 18 gallons, 18-50.9 gallons, 51-74.9 gallons, or greater than 75 gallons].

Estimated energy cost is based on a national average [electricity, natural gas, propane, or oil] cost of [__ cents per kWh or \$__ per therm or gallon].

Estimated yearly energy use: ____ [kWh or therms].

ftc.gov/energy

(viii) For instantaneous water heaters (appendices D4 and D5), the statement will read as follows (fill in the blanks with the appropriate model type, and the energy cost figures):

Your costs will depend on your utility rates and use.

Cost range based only on [electric models or models fueled by natural gas] with a [very small, low, medium, or high] gallons per minute rating [0 to 1.6, 1.7 to 2.7, 2.8 to 4.0, or greater than 4.0].

Estimated energy cost is based on a national average [electricity, natural gas, or propane] cost of [__ cents per kWh or \$__ per therm or gallon].

Estimated yearly energy use: ____ [kWh or therms].

ftc.gov/energy

(ix) For dishwashers covered by appendices C1 and C2, the statement will read as follows (fill in the brackets with the appropriate capacity and the energy cost figures):

Your costs will depend on your utility rates and use.

Cost range based only on [compact/standard] capacity models.

Estimated energy cost is based on four washloads a week, and a national average electricity cost of [] cents per kWh and natural gas cost of \$[] per therm.

For more information, visit www.ftc.gov/energy.

(x) For clothes washers covered by appendices F1 and F2, the statement will read as follows (fill in the blanks with the appropriate capacity and energy cost figures):

Your costs will depend on your utility rates and use.

Cost range based only on [compact/standard] capacity models.

Estimated operating cost is based on six wash loads a week and a national average electricity cost of __cents per kWh and natural gas cost of \$__per therm.

ftc.gov/energy

* * * * *

3. In § 305.13, revise paragraph (a)(1)(xii), as added September 15, 2015, at 81 FR 63649, and effective September 17, 2018, to read as follows:

§ 305.13 Labeling for ceiling fans.

(a) * * *

(1) * * *

(xii) For fans from 19 or more inches and less than or equal to 84 inches in diameter, the label shall display a cost range of \$3 to \$34 along with the statement underneath the range “Cost Range of Similar Models (19”- 84”).

* * * * *

4. In § 305.16, effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], revise paragraphs (a)(3) and (4) and (b)(3) and (4) to read as follows:

§ 305.16 Labeling and marking for plumbing products.

(a) * * *

(3) The package for each showerhead and faucet shall disclose the manufacturer's name and the model number.

(4) The package or any label attached to the package for each showerhead or faucet shall contain at least the following: the flow rate expressed in gallons per minute (gpm) or gallons per cycle (gpc), and the flow rate value shall be the actual flow rate or the maximum flow rate specified by the standards established in subsection (j) of section 325 of the Act, 42 U.S.C. 6295(j). Each flow rate disclosure shall also be given in liters per minute (L/min) or liters per cycle (L/cycle).

(b) * * *

(3) The package, and any labeling attached to the package, for each water closet and urinal shall disclose the flow rate, expressed in gallons per flush (gpf), and the water use value shall be the actual water use or the maximum water use specified by the standards established in subsection (k) of section 325 of the Act, 42 U.S.C. 6295(k). Each flow rate disclosure shall also be given in liters per flush (Lpf).

(4) With respect to any gravity tank-type white 2-piece toilet offered for sale or sold before January 1, 1997, which has a water use greater than 1.6 gallons per flush (gpf), any printed matter distributed or displayed in connection with such product (including packaging and point-of-sale

material, catalog material, and print advertising) shall include, in a conspicuous manner, the words “For Commercial Use Only.”

* * * * *

5. In § 305.20, revise paragraph (b)(1)(i)(F) to read as follows:

§ 305.20 Paper catalogs and Web sites.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(F) Televisions. The estimated annual operating cost determined in accordance with § 305.5 and a disclosure stating “Your energy cost depends on your utility rates and use. The estimated cost is based on 12 cents per kWh and 5 hours of use per day. For more information, visit www.ftc.gov/energy.”

* * * * *

6. Revise appendix D5 to read as follows:

APPENDIX D5 TO PART 305 - WATER HEATERS – INSTANTANEOUS - ELECTRIC

Range Information

CAPACITY	Range of Estimated Annual Energy Costs (Dollars/Year)	
	LOW	HIGH
Capacity (maximum flow rate); gallons per minute (gpm)		
“Very Small” - less than 1.6	\$72	\$74
“Low” - 1.7 to 2.7		

“Medium” – 2.8 to 3.9	*	*
“High” - over 4.0	*	*
	*	*

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2017-13469 Filed: 6/27/2017 8:45 am; Publication Date: 6/28/2017]